

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:09-CV-137-GCM-DCK**

KY TAN LE,

Plaintiff,

v.

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

**MEMORANDUM AND
RECOMMENDATION**

THIS MATTER IS BEFORE THE COURT on *pro se* Plaintiff's "Summary Judgment" (Document No. 9) filed August 8, 2009. This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b), and is now ripe for review. After careful review of the record and the motion, the undersigned will respectfully recommend that Plaintiff's "motion" be denied without prejudice.

Plaintiff filed this action on April 6, 2009, apparently seeking review of a decision of the Commissioner of Social Security denying benefits during a mandatory waiting period. (Document No. 1). On April 23, 2009, the Court granted Plaintiff's application to proceed *in forma pauperis*. (Document No. 3). The Court then issued its "Pretrial Scheduling Order" (Document No. 8) ordering that Plaintiff "file a Motion for Summary Judgment and Supporting memorandum of law within 60 days" and that the Commissioner file a memorandum of law in opposition within 60 days of service of Plaintiff's motion and supporting memorandum.

On August 10, 2009, Plaintiff filed a brief letter (Document No. 9) that the Clerk's office recorded on the docket as a "Motion for Summary Judgment." This "motion" fails to state with particularity the grounds for a motion, the relief sought, or to include any brief or memorandum of

law in support, as required by Local Rule 7.1 and the “Pretrial Scheduling Order” (Document No. 8).

The undersigned, out of an abundance of consideration of the Plaintiff’s status as a *pro se* litigant and Plaintiff’s apparent confusion regarding the Court’s expectations, will respectfully recommend that the pending “Summary Judgment” (Document No. 9) document, currently construed as a motion for summary judgment, be denied without prejudice and that Plaintiff be allowed a brief extension of time to file a proper motion for summary judgment and memorandum in support.

IT IS, THEREFORE, RECOMMENDED that *pro se* Plaintiff’s “Summary Judgment” (Document No. 9) be **DENIED WITHOUT PREJUDICE**.

IT IS FURTHER RECOMMENDED that the Court *sua sponte* allow Plaintiff an extension of time through **June 25, 2010**, to file a motion for summary judgment and memorandum of law in support and allow Defendant to file a response or revised motion for summary judgment on or before **July 26, 2010**.

NOTICE OF APPEAL RIGHTS

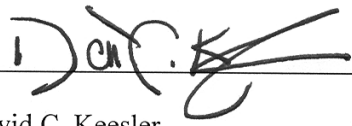
The parties are hereby advised that, pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72 of the Federal Rules of Civil Procedure, written objections to the proposed findings of fact, conclusions of law, and recommendation contained herein must be filed within fourteen (14) days of service of same. Page v. Lee, 337 F.3d 411, 416 n. 3 (4th Cir.2003); Snyder v. Ridenour, 889 F.2d 1363, 1365 (4th Cir.1989); United States v. Rice, 741 F.Supp. 101, 102 (W.D.N.C.1990). Failure to file objections to this Memorandum and Recommendation with the District Court constitutes a waiver of the right to *de novo* review by the District Court. Diamond v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir.2005); Wells v. Shriners Hosp., 109 F.3d 198, 201 (4th Cir.1997); Snyder, 889 F.2d

at 1365. Moreover, failure to file timely objections will preclude the parties from raising such objections on appeal. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986); United States v. Schronce, 727 F.2d 91 (4th Cir.), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to send copies of this Memorandum and Recommendation to the *pro se* Plaintiff, counsel for the Defendant, and the Honorable Graham C. Mullen.

IT IS SO RECOMMENDED.

Signed: May 5, 2010



David C. Keesler
United States Magistrate Judge

